

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: **DEREK WILLIAM BATTY**

Application No.: 10/663,438

Group No.: 3635

Filed: SEPTEMBER 16, 2003

Examiner:

For: SUPPORT DEVICE FOR A RIB

Attorney Docket No.: U 014818-3

Mail Stop Patent Office  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST TO WITHDRAW SECOND NOTICE TO FILE  
MISSING PARTS OF NONPROVISIONAL APPLICATION**

A Notice to File Missing Parts of Nonprovisional Application was mailed on  
December 8, 2003.

---

**CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10\***

*(When using Express Mail, the Express Mail label number is **mandatory**;  
Express Mail certification is optional.)*

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

- ☒ deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.  
**37 C.F.R. 1.8(a)**
- ☒ with sufficient postage as first class mail.
- ☐ as "Express Mail Post Office to Addressee"  
Mailing Label No. \_\_\_\_\_  
(mandatory)

**37 C.F.R. 1.10\***

**TRANSMISSION**

- ☐ transmitted by facsimile to the Patent and Trademark Office.

  
Signature

Date: November 29, 2004

JULIAN H. COHEN

(type or print name of person certifying)

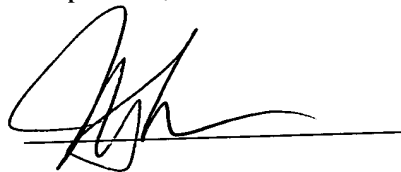
**\*WARNING:** Each paper or fee filed by "Express Mail" **must** have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).

*"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will **not** be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.*

A Completion of Filing Requirements in response to that Notice that included the payment of the filing fee, the oath and declaration and a preliminary amendment substituting replacement sheets of Figures 1 - 3 was mailed to the Patent Office on February 5, 2004. A copy of the Completion and its acknowledgment postcard stamped by the U. S. Patent Office is attached to show this.

Therefore, it is requested that the second Notice of Missing Parts (copy attached) mailed on November 8, 2004 be withdrawn since all of the requirements have already been met.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JH', is written over a horizontal line.

JULIAN H. COHEN  
LADAS & PARRY LLP  
26 WEST 61<sup>ST</sup> STREET  
NEW YORK, NEW YORK 10023  
REG.NO.20302(212)708-1887

U 014818-3

February 5, 2004

IN RE: DEREK WILLIAM BATTY

SERIAL NO.: 10/663,438

GROUP NO.: 3635

FILED: SEPTEMBER 16, 2003

EXAMINER: - -

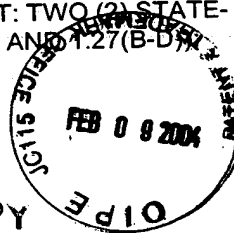
FOR: SUPPORT DEVICE FOR A RIB

COMPLETION OF FILING REQUIREMENTS: FORM PTO-1533: DECLARATION  
AND POWER OF ATTORNEY: PRELIMINARY AMENDMENT: TWO (2) STATE-  
MENT CLAIMING SMALL ENTITY STATUS (37 CFR 1.9(c-f) AND 1.27(B-D))  
\$450.00 (COMPLETION FEE) (CHECK ENCLOSED).

FILED \_\_\_\_\_

CJM/JHC/gm

BEST AVAILABLE COPY



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: DEREK WILLIAM BATTY  
Application No.: 10/663,438  
Filed: SEPTEMBER 16, 2003  
For: SUPPORT DEVICE FOR A RIB

Group No.: 3635  
Examiner:

Mail Stop Missing Part  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

COMPLETION OF FILING REQUIREMENTS  
-- NONPROVISIONAL APPLICATION

(check and complete this item, if applicable)

- I. [X] This replies to the Notice to File Missing Parts of Application (PTO-1533) or Notice of Informal Application or Notice to File Corrected Applications Papers mailed DECEMBER 8, 2003

NOTE: If these papers are filed before the office letter issues, adequate identification of the original papers should be made, e.g., in addition to the name of the inventor and title of invention, the filing date based on the "Express Mail" procedure, the serial number from the return post card or the attorney's docket number added.

CERTIFICATION UNDER 37 C.F.R. 1.8(a) and 1.10\*  
(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

- ☒ deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents,  
P. O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. 1.8(a)

37 C.F.R. 1.10\*

- ☒ with sufficient postage as first class mail.

☐ as "Express Mail Post Office to Address"  
Mailing Label No. \_\_\_\_\_ (mandatory)

TRANSMISSION

- ☐ transmitted by facsimile to the Patent and Trademark Office.

Date: February 5, 2004

Signature

CLIFFORD J. MASS

(type or print name of person certifying)

\*WARNING: Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

[X] A copy of the Notice is enclosed.

NOTE: The PTO requires that a copy of Form PTO-1533 be returned with the response to the notice to file missing parts to the application.

### DECLARATION OR OATH

II. (a) [X] No declaration or oath was filed. Enclosed is the original declaration or oath for this application.

NOTE: If the correct inventor or inventors are not named on filing a nonprovisional application under Section 1.53(b) without an executed oath or declaration under Section 1.63, the later submission of an executed oath or declaration under Section 1.63 during the pendency of the application will act to correct the earlier identification of inventorship. 37 C.F.R. Section 1.48(f)(1).

OR

(b) [ ] The declaration or oath that was filed was determined to be defective. A new original oath or declaration is attached.

NOTE: For surcharge fee for filing declaration after filing date complete item VI(3) below.

NOTE: "The following combinations of information supplied in an oath or declaration filed after the filing date are acceptable as minimums for identifying a specification and compliance with any one of the items below will be accepted as complying with the identification requirement of 37 C.F.R. Section 1.63:

- (A) application number (consisting of the series code and the serial number, e.g., 08/123,456);
  - (B) serial number and filing date;
  - (C) attorney docket number which was on the specification as filed;
  - (D) title which was on the specification as filed and reference to an attached specification which is both attached to the oath or declaration at the time of execution and submitted with the oath or declaration; or
  - (E) title which was on the specification as filed and accompanied by a cover letter accurately identifying the application for which it was intended by either the application number (consisting of the series code and the serial number, e.g., 08/123,456), or serial number and filing date. Absent any statement(s) to the contrary, it will be presumed that the application filed in the PTO is the application which the inventor(s) executed by signing the oath or declaration.
- M.P.E.P. Section 601.01(a), 7th ed.

NOTE: Another minimum found acceptable in the declaration is the filing date (i.e., date of express mail) and the express mail number, useful where the serial number is not yet known. But note the practice where the express mail deposit is a Saturday, Sunday or holiday within the District of Columbia. 37 C.F.R. Section 1.10(c).

(complete as applicable)

Attached is a

- (c) [ ] Statement by practitioner that papers attached to declaration are a copy of those filed in PTO to get a filing date
- (d) [ ] Statement that substitute specification contains no new matter.
- (e) [X] Preliminary Amendment
- (f) [ ] Submission of "Sequence Listing," computer readable copy, and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence

**TRANSMITTAL OF ENGLISH TRANSLATION  
OF NON-ENGLISH LANGUAGE PAPERS**

- III. ☐ Submitted herewith is an English translation of the non-English language application papers as originally filed. Also submitted herewith is a statement by the translator of the accuracy of the translation. It is requested that this translation be used as the copy for examination purposes in the PTO.

*NOTE: For fee processing a non-English application, complete item VI(5) below.*

*NOTE: A non-English oath or declaration in the form provided or approved by the PTO need not be translated. 37 C.F.R. Section 1.69(b).*

**SMALL ENTITY STATUS**

- IV. a. ☒ A statement that this filing is by a small entity  
*(check and complete applicable items)*

☒ is attached.  
☐ was filed on \_\_\_\_\_ (original).  
☐ was made by paying the basic filing fee as a small entity.  
☐ is being made now by paying the basic filing fee as a small entity.

- b. ☐ A separate refund request accompanies this paper.

**COMPLETION FEES**

V.

**WARNING:** *Failure to submit the surcharge fees where required will cause the application to become abandoned. 37 C.F.R. Section 1.53.*

**NOTE:** *For effect on fees of failure to establish status, or change status, as a small entity, see 37 C.F.R. Section 1.28(a).*

1. Filing fee

<input checked="" type="checkbox"/> original patent application (37 C.F.R. Section 1.16(a)--\$770.00; small entity--\$385)	\$ <u>385.00</u>
<input type="checkbox"/> design application (37 C.F.R. Section 1.16(f)--\$340; small entity--\$170)	\$ _____

2. Fees for claims

- ☐ each independent claim in excess of 3  
(37 C.F.R. Section 1.16(b)--\$86; small entity--\$43) \$ \_\_\_\_\_
- ☐ each claim in excess of 20  
(37 C.F.R. Section 1.16(c)--\$18; small entity--\$9) \$ \_\_\_\_\_
- ☐ multiple dependent claim(s)  
(37 C.F.R. Section 1.16(d)--\$290; small entity--\$145) \$ \_\_\_\_\_

3. Surcharge fees

- ☒ late payment of filing fee and/or late filing of original declaration or oath  
(37 C.F.R. Section 1.16(e)--\$130; small entity--\$65) \$ 65.00

*NOTE: Even where a facsimile declaration or oath signed by the inventor(s) was part of the originally filed papers, the surcharge fee is required.*

*NOTE: If both the filing fee and declaration or oath were missing from the original papers, the Office practice under 37 C.F.R. Section 1.16(e) is that only one surcharge fee need be paid whether the later filed oath or declaration and/or the filing fee are submitted afterwards at the same time or at different times.*

4. ☐ Petition and fee for filing by other than  
all the inventors or a person not the inventor  
(37 C.F.R. Sections 1.17(i) and 1.47--\$130) \$ \_\_\_\_\_
5. ☐ Fee for processing an application filed with  
a specification in a non-English language  
(37 C.F.R. Sections 1.17(k) and 1.52(d)--\$130) \$ \_\_\_\_\_
6. ☐ Fee for processing and retention of application  
(37 C.F.R. Sections 1.21(l) and 1.53(d)--\$130) \$ \_\_\_\_\_

*NOTE: 37 C.F.R. Section 1.21(l) establishes a fee for processing and retaining any application which is abandoned for failing to complete the application pursuant to 37 C.F.R. Section 1.53(f) and this, as well as, the changes to 37 C.F.R. Section 1.53 and 1.78 indicate that in order to obtain the benefit of a prior U.S. application, either the basic filing fee or the processing and retention fee of Section 1.21(l) within 1 year of notification under Section 1.53(f) must be paid.*

Total completion fees \$ 450.00

## EXTENSION OF TIME

### VI.

*(complete (a) or (b), as applicable)*

The proceedings herein are for a patent application, and the provisions of 37 C.F.R. Section 1.136(a) apply.

- (a) ☐ Applicant petitions for an extension of time, the fees for which are set out in 37 C.F.R. Section 1.17(a)(1)-(4), for the total number of months checked below:

Extension (months)	Fee for other than <u>small entity</u>	Fee for <u>small entity</u>
<input type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 420.00	\$210.00
<input type="checkbox"/> three months	\$ 950.00	\$475.00
<input type="checkbox"/> four months	\$1,480.00	\$740.00

Fee \$ \_\_\_\_\_

If an additional extension of time is required, please consider this a petition therefor.

*(check and complete the next item, if applicable)*

☐ An extension for \_\_\_\_\_ months has already been secured, and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ \_\_\_\_\_

OR

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

## TOTAL FEE DUE

### VII.

The total fee due is

Completion fee(s) \$ 450.00  
Extension fee (if any) \$ \_\_\_\_\_

Total Fee Due \$ 450.00



## PAYMENT OF FEES

### VII.

☒ Enclosed is a check in the amount of \$ 450.00.

☐ Charge Account No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_.

A duplicate of this request is attached.

*NOTE: Fees should be itemized in such a manner that it is clear for which purpose the fees are paid. 37 C.F.R. Section 1.22(b).*

Please charge Account No. 12-0425 for any fees which may be due by this paper.

## AUTHORIZATION TO CHARGE ADDITIONAL FEES

### IX.

*WARNING: Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges if extra claims are authorized.*

*NOTE: "Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. Section 1.26(a).*

☒ The Commissioner is hereby authorized to charge the following additional fees that may be required by this paper and during the pendency of this application to Account No. 12-0425

☒ 37 C.F.R. Section 1.16(a), (f) or (g) (filing fees)

☐ 37 C.F.R. Section 1.16(b), (c) and (d) (presentation of extra claims)

*NOTE: Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims canceled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 C.F.R. Section 1.16(d)), it might be best not to authorize the PTO to charge additional claim fees, except possibly when dealing with amendments after final action.*

☒ 37 C.F.R. Section 1.16(e) (surcharge for filing the basic filing fee and/or declaration on a date later than the filing date of the application)

☒ 37 C.F.R. Section 1.17(a)(1)-(5) (extension fees pursuant to Section 1.136(a).

☒ 37 C.F.R. Section 1.17 (application processing fees)

NOTE: "A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under Section 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in Section 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." 37 C.F.R. Section 1.136(a)(3).

NOTE: Section 1.311(b) provides that an authorization to charge the issue fee (§ 1.18) to a deposit account may be filed in an individual application **only after the mailing of the notice of allowance**. Accordingly, general authorizations to any fees and specific authorizations to pay the issue fee that are filed prior to the mailing of a notice of allowance will generally not be treated as requesting payment of the issue fee and will not be given effect to act as a reply to the notice of allowance. Applicant, when paying the issue fee, should submit a new authorization to charge fees, such as by completing box 6b on the current PTOL 85-B form. Where no reply to the notice of allowance is received, the application will stand abandoned notwithstanding the presence of general authorizations to pay fees or a specific authorization to pay the issue fee that were submitted prior to mailing of the notice of allowance. Where an attempt is made to pay the issue fee but an incorrect amount is submitted, § 1.311(b)(1), or where the Office's issue fee transmittal form (currently PTOL-85(B)) is completed by applicant and submitted, § 1.311(b)(2), in reply to a notice of allowance, an exception will be made. Such submissions will operate as a request to charge the issue fee to any deposit account identified in a previously filed (i.e., submitted prior to the mailing of the notice of allowance) authorization to charge fees, and will be allowed to act as payment of the correct issue fee, § 1.311(b). See also the change to § 1.26(b), Notice of September 8, 2000, Fed. Reg. 54603-54683, at 54646 and 54647.

  
SIGNATURE OF PRACTITIONER

JULIAN H. COHEN  
(type or print name of practitioner)

Reg. No.: 20,302

Tel. No.: (212)708-1887

LADAS & PARRY  
P.O. Address

Customer No.: 00140

26 WEST 61<sup>ST</sup> STREET  
NEW YORK, NEW YORK 10023

IFW



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/663,438	09/16/2003	Derrek William Batty	U 014818-3

CONFIRMATION NO. 1568

## FORMALITIES LETTER



\*OC000000014318275\*

William R. Evans  
 Ladas & Parry  
 26 West 61 Street  
 New York, NY 10023

Date Mailed: 11/08/2004

## NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is missing.  
*A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.*

The application is informal since it does not comply with the regulations for the reason(s) indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- Replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121 are required. The drawings submitted are not acceptable because:
  - The drawings have a line quality that is too light to be reproduced (weight of all lines and letters must be heavy enough to permit adequate reproduction) or text that is illegible (reference characters, sheet numbers, and view numbers must be plain and legible) see 37 CFR 1.84(l) and (p)(1)); See Figure(s) 2.

Replies should be mailed to: Mail Stop Missing Parts  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria VA 22313-1450

*A copy of this notice MUST be returned with the reply.*

2134  
Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE